

REMARKS

This paper responds to the Office Action mailed on October 29, 2008. No claims are amended, no claims are added, and no additional claims are canceled. Consequently, claims 1-72 remain pending in this application.

Rejection of the Claims under 35 U.S.C. §103(a)

On page 3, paragraph 4 of the Office Action, the Examiner rejected claims 1-3, 19-21, 37-39, and 55-57 under 35 U.S.C. § 103(a) as being obvious over U.S. Published Patent Application No. 2003/0046437 to Eytchison et al. (*Eytchison*) in view of U.S. Patent No. 6,112,246 to Horbal et al. (*Horbal*). More specifically, the Examiner rejected each of Applicants' independent claims 1, 19, 37 and 55 at paragraphs 5 and 6. Since a *prima facie* case of obviousness has not been properly established, Applicants respectfully traverse the rejection.

The Examiner states that "Eytchison does not disclose a common interface that is internal to each device. Horbal discloses an [sic] micro-server that is implemented in networked devices [to] . . . provide a common interface via Hyper Text Transfer Protocol (HTTP)." ¹ In response, Applicants assert that *Eytchison* and *Horbal* are not even properly combinable as obviousness references since *Horbal* teaches away from the central notion of *Eytchison*.

Eytchison discusses a device abstraction layer specifically implemented to deal with device native communication protocols.

A network architecture for a network of electronic devices . . . wherein the plurality of electronic devices each operate using a *device native communication protocol*. The architecture also includes a *device abstraction layer (DAL) which communicates with each of the devices using the device native communication protocols* and also presents a unified communication interface to a

¹ Office Action at 3, paragraph 6.

content abstraction program interface. (*Eytchison* at Abstract, emphasis added.)

Eytchison continues by discussing that as long as devices comply with a given communications protocol, each device may communicate with other devices following the same protocol.

However, *Eytchison* discusses that problems exist where devices are unable to communicate with other devices on existing infrastructures where the devices are not based on the same protocol.

Typical protocols are defined by standards . . . Such protocols will collectively be referred to as communications protocols or just protocols.

Such communications protocols are used to provide device-centric standards which solve many problems relating to device control and interoperability. Thus, *as long as the devices comply with the standards, they can communicate with other networked devices which comply with the same standard*. Although satisfactory for these limited, but necessary purposes, *they fall short as effective content management tools on existing infrastructures*. (*Eytchison* at paragraphs [0004] to [0005]. Emphasis added.)

Thus, *Eytchison* is only concerned with existing devices that are *not standardized* on a given protocol.

In contrast, *Horbal* discusses forcing all devices to standardize on a given protocol.

A *micro-server adapted to be embedded* into a piece of industrial machinery, an automobile, *a consumer product*, and the like . . . The micro-server is capable of interfacing with a device to access information from the device, such as control or maintenance information. *The micro-server can then organize and format that information compatible with a communication protocol*. (*Horbal* at Abstract, emphasis added.)

Thus, *Horbal* is not concerned with having devices based on non-standard protocols (i.e., the various device native communication protocols of *Eytchison*). *Horbal* ignores the entire non-

standardized communications issue by simply embedding a micro-server into each device and then applies the same protocol, such as HTTP, to each device.²

Consequently, *a person of ordinary skill in the art concerned with the problem of a plurality of devices based on non-standard protocols in an existing infrastructure, as found in Eytchison, would not look to Horbal to remedy the problem.* *Horbal* discusses embedding a new micro-server into each device and then implementing the same communications standard into each device. *Eytchison* is concerned with communications in an existing infrastructure (especially with reference to existing consumer electronics devices³) to avoid retrofitting every device with an embedded micro-server.

Thus, **Horbal teaches away from the very problem Eytchison is trying to solve.** Thus, the references of *Horbal* and *Eytchison* are not properly combinable. Further, Applicants' independent claims each recite, *inter alia*, "transmitting data between dissimilar communications devices . . . through a common interface."⁴ Applying the embedded micro-server of *Horbal* obviates the necessity for transmitting data between dissimilar communications devices since all devices would share a common protocol.

The fact that a reference teaches away from a claimed invention is highly probative that the reference would not have rendered the claimed invention obvious to one of ordinary skill in the art. (*Stranco Inc. v. Atlantes Chemical Systems, Inc.*, 15 USPQ2d 1704, 1713 (Tex. 1990).) When the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be nonobvious. (*Id.* at 4 citing *United States v. Adams*, 383 U.S. 39, 51-51 (1966).)

Since the references are not properly combinable, asserting that the cited references teaches the Applicants' claimed elements is merely conclusory with no actual support found in either *Horbal* or *Eytchison*. "[R]ejections on obviousness grounds cannot be sustained by mere

² See, for example, "FIG. 4 is a simplified block diagram showing possible components of a micro-server." (*Horbal* at col. 8, lines 20-21.) Element 422 on the micro-server is an "HTTP Protocol Server." (*Id.* at Fig. 4.)

³ See, for example, *Eytchison* at paragraph [0033], referenced directly by the Examiner.

⁴ Applicants' independent claim 1. Applicants' other independent claims, namely claims 19, 37, and 55 each share similar limitations with claim 1.

conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” (*See In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006) cited with approval in *KSR Int'l v. Teleflex Inc.*, 127 S. Ct. 1727, 1740-41 (2007)). Although the Examiner cites to portions of the cited references, there is no rational argument providing a legal nexus between the cited portions and Applicants’ claims. Moreover, since the references are not properly combinable, then they cannot teach or suggest, either singly or in combination, all limitations of Applicants’ claims.

Since the references are not properly combinable and not all elements are taught or suggested by the cited art, Applicants respectfully request the Examiner remove the rejection under 35 U.S.C. §103(a) with regard to Applicants’ independent claims 1, 19, 37, and 55. Further, since claims 2-3, 20-21, 38-39, and 56-57 depend, either directly or indirectly from claims 1, 19, 37, and 55, respectively, they too are allowable for at least the same reasons. Further these claims each may contain additional patentable subject matter.

On page 4, paragraph 9 of the Office Action, the Examiner rejected claims 1-5, 8, 17-18, 19-23, 26, 35-36, 37-41, 44, 53-54, 55-59, 62, and 71-72 under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 6,853,637 to Norrell et al. (*Norrell*) in view of *Eytchison* and *Horbal*. However, as shown above, *Eytchison* is not properly combinable with *Horbal*. *Norrell* does nothing to cure the deficiencies not found in either *Eytchison* or *Horbal*. Thus, claims 1-5, 8, 17-18, 19-23, 26, 35-36, 37-41, 44, 53-54, 55-59, 62, and 71-72 are all allowable for at least the same reasons as given above.

On page 7, paragraph 20 of the Office Action, the Examiner rejected claims 6-7, 24-25, 42-43, and 60-61 under 35 U.S.C. § 103(a) as being obvious over *Norrell* in view of *Eytchison* and *Horbal*, as applied to claims 5, 23, 41, and 59 above, and further in view of U.S. Patent No. 7,191,236 to Simpson-Young et al. (*Simpson-Young*). On page 8, paragraph 24, the Examiner rejected claims 9-10, 27-28, 45-46, and 63-64 under 35 U.S.C. § 103(a) as being obvious over *Norrell* in view of *Eytchison* and *Horbal* et al., as applied to claims 4, 22, 40, and 58 respectively above, and further in view of U.S. Published Patent Application No. 2002/0099867 to Wilkinson et al. (*Wilkinson*). On page 9, paragraph 27 the Examiner rejected claims 11-13, 29-31, 47-49, and 65-67 under 35 U.S.C. § 103(a) as being obvious over *Norrell* in view of *Eytchison* and

Horbal, as applied to claims 1, 19, 37 and 55 above, and further in view of U.S. Patent No. 6,789,123 to Li et al. (*Li*). On page 10, paragraph 30 of the Office Action, the Examiner rejected claims 14, 32, 50, and 68 under 35 U.S.C. § 103(a) as being obvious over *Norrell* in view of *Eytchison* and *Horbal*, as applied to claims 1, 19, 37 and 55 above, and further in view of U.S. Published Patent Application No. 2001/0030950 to Chen et al. (*Chen*). On page 11, paragraph 32, the Examiner rejected claims 15, 33, 51, and 69 under 35 U.S.C. § 103(a) as being obvious over *Norrell* in view of *Eytchison*, *Horbal*, and *Chen*, as applied to claims 14, 32, 50, and 68 above, and further in view of U.S. Patent No. 6,298,069 to Prabhu et al. (*Prabhu*) and U.S. Patent No. 6,233,611 to Ludtke et al. (*Ludtke*). Finally, on page 12, paragraph 34 of the Office Action, the Examiner rejected claims 16, 34, 52, and 70 under 35 U.S.C. § 103(a) as being obvious over *Norrell* in view of *Eytchison* and *Horbal*, as applied to claims 1, 19, 37, and 55 respectively above, and further in view of *Ludtke*.

However, each of these claims depend either directly or indirectly from one of the independent claims, 1, 19, 37, or 55, that Applicants have shown to be allowable. Neither *Simpson-Young*, *Wilkinson*, *Li*, *Chen*, *Prabhu*, nor *Ludtke* do anything to cure the deficiencies not found in either *Eytchison* or *Horbal*, above. Thus, each of these dependent claims are allowable for at least the same reasons as given above with regard to independent claims 1, 19, 37, and 55.

CONCLUSION

Applicants respectfully submit that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone the undersigned representative at (408) 660-2015 to facilitate prosecution of this application.

If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(408) 660-2015

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By



Bradley W. Scheer
Reg. No. 47,059

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on March 20, 2009.

/ Jonathan Ferguson /

Jonathan Ferguson